Connecticut Department of
ENERGY &
ENVIRONMENTAL
PROTECTION

STATE OF CONNECTICUT
DEPARTMENT OF ENERGY AND ENVIRONMENTAL PROTECTION

Public Hearing – March 18, 2013
Planning and Development Committee

Testimony Submitted by Commissioner Daniel C. Esty
Presented By Deputy Commissioner Macky McCleary

Committee Senate Bill No. 459 –AN ACT CONCERNING LOCAL CONTROL OVER COASTAL AREAS

Thank you for the opportunity to present testimony regarding Committee Senate Bill No. 459 – An Act Concerning Local Control Over Coastal Areas. The Department of Energy and Environmental Protection (DEEP) offers the following testimony.

DEEP agrees with some and opposes other concepts within this bill.

Overall, DEEP appreciates the Committee's focus on these important, complex and often contentious coastal issues. We recognize that the challenge of balancing private property interests with the protection of the coastal resources and adaptation to a future of sea level rise and more damaging coastal storms. Our shared coastal resources—our marshes, beaches, tidal flats and waters— are essential to creating and maintaining the economic value of our shoreline and coastal property. Creating a more resilient and adaptable shoreline poses a difficult challenge and some stakeholders are likely to be unhappy with the process. Sea level rise and coastal hazards will only increase their assault on our coast. From this perspective, it is clear that coastal management planning and regulation are an integral part of the solution. However, a balanced approach is necessary. We would welcome the opportunity to work with the Committee on finding the right balance.

As the Committee will recall, it was only last year that the General Assembly passed PA 12-101, an ambitious coastal management bill that amended a number of longstanding statutory provisions, several of them dealing with the substance and process of regulating seawalls and other shoreline protective structures. These new provisions, which were the result of protracted negotiations among many interests and stakeholders, have only been in effect since October 1 of last year. Accordingly, it would not seem prudent to consider such drastic changes as SB 459 proposes without at least allowing last year's bill a chance to operate.

We also need to build off of our current knowledge and recent experience. Both long-term scientific analysis as well as recent experience with Storms Irene and Sandy shows that shoreline armoring often

does not protect property. Seawalls, revetments, groins, and bulkheads physically cannot stop storm surge or flooding, and more such structures would not have spared coastal residences in our recent storms. At best, they may provide temporary protection from ongoing day-to-day erosion, at the expense of beaches and other public trust resources, as well as neighboring properties.

Sections 1 and 2 of SB 459 would essentially eliminate state and local regulation of seawalls. Certain decks, supporting structural members of a residence, and seawalls would be exempt from both municipal site plan review and from state structures, dredging and fill permits. With this exemption, the bill would place Connecticut out of step with the standard regulatory scheme used in virtually every other coastal state. Last year's OLR report on seawall construction laws in East Coast states (http://cga.ct.gov/2012/rpt/2012-R-0074.htm) showed that other states had standards at least as restrictive as Connecticut's, and PA 12-101 even reinforced the coastal management policy to minimize shoreline armoring. Our existing policies are in accordance with the best guidance from sources such as National Oceanic and Atmospheric Administration, the Nature Conservancy, and coastal institutes at universities in other states to take maximum advantage of natural shoreline dynamics and employ hardened structures only as a last resort.

Even apart from the seawall exemption, there are also a number of technical problems with SB 459. For instance, section 1 of the bill exempts "construction of a seawall" under 22a-109(b), which goes on to specify that shoreline flood and erosion control structures shall not be exempt. This contradiction leaves other hardened protective structures such as revetments, groins, and bulkheads subject to the full application of regulatory jurisdiction. The exemption for structural support members and overhanging decks also makes little sense, since these components are rarely proposed separately from an application for an entire residence. Decks in particular may warrant more scrutiny rather than less, after our recent experiences in which many decks became projectiles or debris after Irene and Sandy.

We certainly understand that timeliness in processing applications is important, and through our LEAN initiative and other improvements, DEEP has improved and will continue to improve its processing of applications for shoreline structures. For example, we have reduced the processing time for individual permits down from an average of 805 days in 2008 to 160 days in 2011. We have also reduced processing time on Certificate of Permission down to 53 days and instituted processes to facilitate pre and post storm work. As described in our recent submissions to the Shoreline Protection and Climate Change Task Force on February 13, 2013, DEEP has also evaluated the outcome of applications specifically for shoreline flood and erosion control structures. From 2002 to 2012, we processed 1,207 total applications for shoreline flood and erosion control structures. Of that number, 1,104 (91.5%) were approved, 13 (1%) were ineligible or denied, and 90 (7.5%) were closed, withdrawn or other.

We also note that without state authorization, a seawall proposal would not be eligible for the U.S. Army Corp of Engineers Programmatic General Permit and would necessitate an application for an individual federal permit. Thus, by replacing the current regulatory structure which has been integrated with the federal process, this bill may result in the unintended consequence of requiring individual applications to a federal agency in Massachusetts.

Section 3 of this bill does raise an interesting issue by requiring dredged material to be offered to municipalities and associations for beach restoration at cost or a reasonable fee. This topic, like others associated with dredging, is complex and multifaceted, but DEEP strongly supports the use of appropriate dredged material for beach nourishment. However, much dredged material is unsuitable for beach nourishment due to sediment characteristics or contamination, and many dredging

contractors do not have the proper equipment to place sand on a beach. We are therefore concerned that this provision as written may add additional costs and impediments to much-needed navigational dredging projects, which are already expensive enough and must undergo additional review from federal agencies and the State of New York. We request that the Committee review a drafting change we suggest to replace Section 3 lines 79 through 110 of this bill with language that is attached to this testimony. DEEP would be happy to work with the Committee and all other dredging stakeholders to explore any suitable strategies to promote beneficial reuse for shoreline restoration.

Thank you for the opportunity to present testimony on this proposal. If you should require any additional information, please contact DEEP's legislative liaison, Robert LaFrance at 860-424-3401 or Robert.LaFrance@ct.gov.

Substitute language for Section 3 (includes language from Section 5 of SB 1008).

DEEP requests that the Committee review a drafting change we suggest to replace Section 3 lines 79 through 110 of this bill with language as follows:

Sec. 3. Subsection (e) of section 22a-361 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2013*):

(e) (1) No person, firm or corporation, public, municipal or private, who removes sand, gravel or other material lying waterward of the mean high water mark of the tidal, coastal or navigable waters of the state pursuant to a permit issued under this section on or after October 1, 1996, shall make any beneficial or commercial use of such sand, gravel or other material except upon payment to the state of a fee. [of four dollars per cubic yard of such sand, gravel and other materials.] Such payment shall be made at times and under conditions specified by the commissioner in such permit, provided the commissioner may waive such payment for the beneficial or commercial use of sand, gravel, or other material that such person, firm or corporation decontaminates or processes to meet applicable environmental standards for reuse. No fee shall be assessed for [(1)] (A) the performance of such activities on land which is not owned by the state, [(2)] (B) the use of sand, gravel or other materials for beach restoration projects, or [(3)] (C) ultimate disposal of such sand, gravel or other materials which does not result in an economic benefit to any person. For the purposes of this [section] subdivision, "beneficial or commercial use" includes, but is not limited to, sale or use of sand, gravel or other materials for construction, aggregate, fill or landscaping. The commissioner may adopt regulations, in accordance with the provisions of chapter 54, establishing the amount of the fee required pursuant to this subsection. Such fee shall be four dollars per cubic yard of such sand, gravel and other material until such time as the commissioner adopts such regulations.

(2) The commissioner may require any person, firm or corporation, public, municipal or private, who removes sand, gravel or other material lying waterward of the mean high water mark of the tidal, coastal or navigable waters of the state to make available such sand, gravel or other material of appropriate grain size and composition to any coastal municipality or to any district established pursuant to chapter 105 to plan, lay out, acquire, construct, reconstruct, repair, maintain, supervise and manage a flood or erosion control system. Such sand, gravel or other material shall be offered for the purposes of an appropriately authorized beach nourishment or habitat restoration project and shall be available (A) to municipalities for the cost of transporting such sand, gravel or other material, and (B) to districts for a reasonable fee approved by the commissioner.